

§ 120.912 Borrowed contributions.

The Borrower may borrow its cash contribution from the CDC or a third party. If any of the contribution is borrowed, the interest rate must be reasonable. If the loan is secured by any of the Project assets, the loan must be subordinate to the liens securing the 504 Loan, and the loan may not be repaid at a faster rate than the 504 Loan unless SBA gives prior written approval. A third party lender may not receive voting rights, stock options, or any other actual or potential voting interest in the small business.

§ 120.913 Limitations on any contributions by a Licensee.

Subject to part 107 of this chapter, a Licensee may provide financing for all or part of the Borrower's contribution to the Project. SBA will consider Licensee funds to be derived from federal sources if the Licensee has Leverage (as defined in § 107.50 of this chapter). If the Licensee does not have Leverage, SBA will consider the investment to be from private funds. Licensee financing must be subordinated to the 504 loan and must not be repaid at a faster rate than the Debenture. (Refer to § 120.930(a) for additional limitations.)

[68 FR 57987, Oct. 7, 2003]

THIRD PARTY LOANS

§ 120.920 Required participation by the Third Party Lender.

(a) *Amount of Third Party Loans.* A Project financing must include one or more Third Party Loans totaling at least as much as the 504 loan. However, the Third Party Loans must total at least 50 percent of the total cost of the Project if:

- (1) The Borrower (or Operating Company, if the Borrower is an Eligible Passive Company) has operated for two years or less, or
- (2) The Project is for the acquisition, construction, conversion or expansion of a limited or single purpose asset.

(b) *Third Party Loan collateral.* Third Party Loans usually are collateralized by a first lien on the Project property. The SBA cannot guarantee these loans.

[64 FR 2118, Jan. 13, 1999]

§ 120.921 Terms of Third Party loans.

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the FEDERAL REGISTER a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

(d) *Future advances.* The Third Party Loan must not be open-ended. After completion of the Project, the Third Party Lender may not make future advances under the Third Party Loan except expenditures to collect amounts due the Third Party Loan notes, maintain collateral and protect the Third Party Lender's lien position on the Third Party Loan.

(e) *Subordination.* The Third Party Lender's lien will be subordinate to the CDC/SBA lien regarding any prepayment penalties, late fees, other default charges, and escalated interest after default due under the Third Party Loan.

(f) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to a rate greater than the maximum rate set forth in paragraph (b) of this section. Regarding any Project that SBA approved after September 30, 1996, SBA will only pay the interest rate on the